

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 DEONDRE WILLIAMS,

8 Defendant.

Case No. 2:14-cr-00099-APG-PAL

**ORDER GRANTING MOTION FOR
AN ORDER DEEMING ATTORNEY-
CLIENT PRIVILEGE WAIVED AND
SETTING A REVISED BRIEFING
SCHEDULE**

(ECF No. 142)

9
10
11 Defendant Deondre Williams has moved to set aside or correct his sentence under 28 U.S.C.
12 § 2255. ECF No. 137. In response, the Government moves for an order deeming the attorney-client
13 privilege between Mr. Williams and his prior counsel, Mace J. Yampolsky, Esq., waived. ECF No.
14 142. The Government also requests a revised briefing schedule.

15 “[W]here a habeas petitioner raises a claim of ineffective assistance of counsel, he waives
16 the attorney-client privilege as to all communications with his allegedly ineffective lawyer.”
17 *Bittaker v. Woodford*, 331 F.3d 715, 716 (9th Cir. 2003) (en banc). *See also, Lambright v. Ryan*,
18 698 F.3d 808, 818 (9th Cir. 2012) (“The defendant impliedly waives his attorney-client privilege
19 the moment he files a habeas petition alleging ineffective assistance of counsel.”). This principle
20 prevents a party from using the privilege as both a sword and a shield, ensuring that a party does
21 “not abuse the privilege by asserting claims the opposing party cannot adequately dispute unless it
22 has access to the privileged materials.” *Bittaker*, 331 F.3d at 719. The waiver of the privilege is
23 limited to the adjudication of the ineffective assistance of counsel claim in the habeas case. *See Id.*
24 at 727-28 (“[D]istrict courts have the obligation, whenever they permit discovery of attorney-client
25 materials as relevant to the defense of ineffective assistance of counsel claims in habeas cases, to
26 ensure that the party given such access does not disclose these materials, except to the extent
27 necessary in the habeas proceeding, i.e., to ensure that such a party’s actions do not result in a
28 rupture of the privilege.”)

1 In his motion, Williams asserts that his previous lawyer, Mace J. Yampolsky, was
2 ineffective because “he intentionally misled Williams and coerced him into pleading guilty by
3 incorrectly advising that co-defendant White was planning to testify against Williams at trial.” ECF
4 No. 137 at 15-16. He thus contends he was deceived and manipulated into pleading guilty. The
5 government argues that Williams waived his attorney-client privilege by asserting this claim. ECF
6 No. 142. The government asks me to declare that the privilege has been waived and to order Mr.
7 Yampolsky to respond to specific requests relating to Williams’ allegations of ineffective assistance
8 of counsel, to permit the government to respond to Williams’ motion. Id. at 3-4.

9 The government has properly narrowed the scope of its waiver request and Williams has
10 waived the attorney-client privilege with respect to the subject areas identified in his § 2255 motion.
11 Williams’ waiver is limited to this habeas case. I thus will grant the government’s motion for
12 waiver, and I will order Mr. Yampolsky to produce most of the information requested by the
13 government. If, after receiving Mr. Yampolsky’s response, the government feels that more
14 information is needed, it may request it at that time.

15 IT IS THEREFORE ORDERED that the United States’ motion for an order deeming the
16 attorney client-privilege waived (**ECF No. 142**) is **GRANTED**. The attorney-client privilege
17 between Williams and Mace J. Yampolsky, Esq. is deemed waived for all purposes relating to
18 Williams’s motion pursuant to 28 U.S.C. § 2255 in this case.

19 IT IS FURTHER ORDERED that Mr. Yampolsky shall, within 30 days of the date of this
20 order, provide the Government with an affidavit or declaration addressing the allegations of
21 ineffective assistance of counsel in Williams’s § 2255 motion (ECF No. 137). At a minimum, Mr.
22 Yampolsky shall provide the following information:

- 23 - All communications Mr. Yampolsky had with Williams regarding the plea negotiation
24 and acceptance process, including any advice rendered regarding whether Williams should
25 or should not plead guilty, and the reasons why.
- 26 - All communications Mr. Yampolsky had with Williams regarding whether any co-
27 defendant would testify against Williams and the source of any such information.

1 - All other documents, materials, or information relating to Williams' allegations,
2 including any written materials documenting relevant communications and advice (e.g.,
3 letters to client, memoranda to file).

4 IT IS FURTHER ORDERED that the clerk of the court shall transmit a copy of this order
5 to Mr. Yampolsky at the email and street addresses he has on file with this court. The United States
6 shall confirm with Mr. Yampolsky that he received a copy of this order.

7 IT IS FURTHER ORDERED that the United States shall file a response to defendant
8 Williams's § 2255 motion, if it has any, no later than 30 days after receiving Mr. Yampolsky's
9 affidavit or declaration. Williams may file a reply in support of his motion within 30 days after the
10 government files its response.

11 Dated: November 28, 2017.

12
13 
14 _____
15 ANDREW P. GORDON
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28